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February 18, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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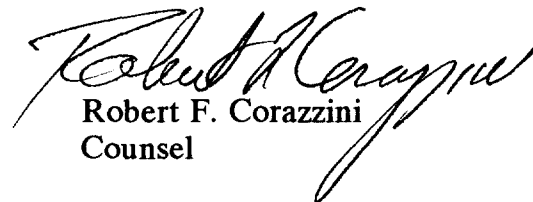
Re: Consolidated Partial Reply to Oppositions
to Petition for Reconsideration and Clarification
MM Docket No. 97-217
File No. RM-9060

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

Transmitted herewith on behalf of Region IV Educational Service Center, George Mason University Instructional Foundation, Inc., Humanities Instructional TV Educational Center, Inc., Valley Lutheran High School, Indiana Higher Education Telecommunications System, Views on Learning, Inc., Butler Community College, Denver Public Schools and Minnesota Public Radio, is an original and five (5) copies of their Consolidated Partial Reply to Oppositions to Petition for Reconsideration and Clarification in MM Docket No. 97-217. Should there be any questions concerning this material, please communicate directly with the undersigned.

Very truly yours,


Robert F. Corazzini
Counsel

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Parts 1, 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service)	
And Instructional Television Fixed)	File No. RM-9060
Service Licensees to Engage in Fixed)	
Two-Way Transmissions)	

**CONSOLIDATED PARTIAL REPLY TO OPPOSITIONS
TO PETITION FOR RECONSIDERATION AND CLARIFICATION**

Comes now, Region IV Education Service Center, George Mason University Instructional Foundation, Inc., Humanities Instructional TV Educational Center, Inc., Valley Lutheran High School, Indiana Higher Education Telecommunications System, Views on Learning, Inc., Butler Community College, Denver Public Schools and Minnesota Public Radio (collectively, the "ITFS Commenting Parties"), by the undersigned counsel to present their Reply to certain limited issues addressed in the following pleadings filed in the above-captioned Order on February 2 and February 4, 1999: Response of the Catholic Television Network; Joint Comments of Dallas County Community College District et al.; Consolidated Opposition to Petitions for Reconsideration filed by Petitioners; Consolidated Opposition to Petitions for Reconsideration filed by Instructional Telecommunications Foundation, Inc.; and Opposition to Petitions for Reconsideration filed by BellSouth Corporation and BellSouth Wireless Cable, Inc. In support thereof, the following is respectfully submitted:

I. DISCUSSION

1. The issues involved in the above-captioned rule making proceeding have certainly been extensively briefed by the various participating parties. Therefore, the ITFS Commenting Parties will limit this Reply to the processing and interference abatement procedures which have evoked the most significantly disparate positions among the participating parties.

2. The general theme of the original Petitioners has been that regardless of the ultimate outcome of this rule making, when the totality of these rules become effective, their cumulative impact must achieve two objectives. First, the processing procedure must be such that the ITFS and MMDS licensees participating in two-way transmission proposals have a reasonable certainty of timely processing and grant of their applications thereby allowing implementation of this new technology without the delays which have inhibited wireless cable operation since virtually its inception. Secondly, once implemented, assurance must be in place that two-way transmission operation will not cause harmful interference to nearby ITFS facilities and if caused, that such interference be cured or eliminated immediately by a process that does not penalize either the ITFS licensee subject to the interference or the wireless two-way operation allegedly causing the interference.

3. Throughout this entire rule making proceeding, the ITFS Commenting Parties have supported the Petitioners' proposals as the most reasonable approach to attaining the desired results based upon the least regulation and the most flexibility. The Petitioners have in their subsequent pleadings attempted to refine these proposals

and the ITFS Commenting Parties continue to support the refinements and clarifications suggested by both the ITFS Commenting Parties and the Petitioners in their petitions for reconsideration and subsequent filings. When all is said and done, it is of utmost importance that the FCC processing procedure not be hamstrung by unnecessary or counterproductive regulatory restrictions. The ITFS Commenting Parties' proposed extension of the new streamlined processing system to all major modifications will achieve that result, without the delays and need for auctions inherent in the counterproposal advanced by Instructional Telecommunications Foundation.

4. Instructional Telecommunications Foundation, Inc. ("ITF") simply opposes changing the current processing procedure and repeatedly objects to a "streamlined", aka automatic grant procedure. In fact, the overriding objection of ITF is directed against the fundamental change in the processing procedure as supported by the ITFS Commenting Parties and other proponents. ITF acknowledges the severely negative impact of the inherent delay in the current procedure, but repeatedly asserts its affinity for the status quo. In an imperfect world, insistence upon clinging to the inadequate procedure of the past merely dooms all parties to be revisited by its failures.

5. Without doubt, the most critical aspect of this entire rule making proceeding is to ensure that when implemented, the new two-way transmission systems do not cause harmful interference to pre-existing ITFS receive stations. Under an expedited processing procedure, the only sure way to achieve that goal is to ensure that if actual harmful interference is alleged, any complaint is dealt with and any interference remedied immediately. Virtually all participating parties are in agreement in supporting

a Commission procedure that would react rapidly in protecting the ITFS facilities. However, a number of the commenting parties continue to support an automatic shutdown procedure on the basis of the filing of a "documented complaint" with the Commission. However, none of these parties has put forth a justification for immediate termination of two-way service without affording the two-way system operator the opportunity to disprove the "documented" complaint and the FCC an opportunity to rule. For the reasons set forth in their Partial Opposition, the ITFS Commenting Parties believe that basic due process and fairness require that at the least, an opportunity however be afforded for the putative offending party to respond.

6. One of the significantly debated issues emerging from this rule making proceeding has been the twenty day notification requirement by response stations. The ITFS Commenting Parties in their Petition for Reconsideration & Clarification urged that the notification requirement be changed from twenty days to a required notification within twenty four hours of activation, because of the anti-competitive effects of a twenty day notification. Although a number of parties addressed the anti-competitive concern of the ITFS Commenting Parties, the argument was misconstrued by some of the opposing parties. The ITFS Commenting Parties wish to clarify that matter.

7. The Joint Comments of Dallas County Community College District, et al., argued that the ITFS Commenting Parties competitive disadvantage concern was not appropriate based upon the Dallas College District's understanding that the "competing" technologies are not analogous inasmuch as none inherently have the shared-spectrum considerations present as are in the ITFS/MMDS services and that the wireless cable

operator, who in turn is the ITFS licensee's lessee, has already addressed the accommodation to these competing concerns. The simple answer is that the "competition" comes not from the various technologies utilized, but because these competitors, regardless of the technology used, have no restrictions imposed upon them by the FCC precluding immediate delivery of their service to their customers. Obviously, the lease between the wireless cable operator and the ITFS licensee can in no way address that competition. Likewise, the Catholic Television Network ("CTN") argues that the competing services cited by the ITFS Commenting Parties do not use radio frequency transmissions for return paths and thus, would not interfere with other receivers. That, of course, is perfectly true but totally begs the question of the competitive disadvantage which the twenty day notice procedure places upon the wireless cable operator. CTN's "solution" is that wireless cable operators are free to use wire line return paths. This, of course, is a total non sequitur since this entire rule making proceeding is designed to create wireless return paths.

II. CONCLUSION

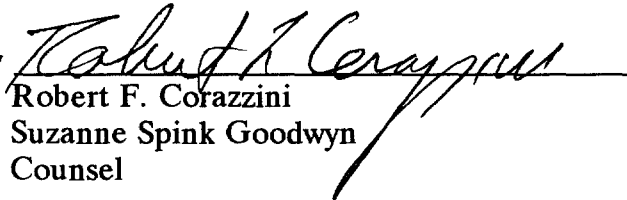
In summary, once again the ITFS Commenting Parties believe that flexibility and equity should be the primary aspects of any policy regarding two-way transmission and the Commission's regulation of ITFS spectrum. ITFS and wireless cable operators should be free to structure their stations and systems in a way that meets their respective

needs allowing for the maximization of the usage of the ITFS spectrum. This can best be achieved through a regulatory scheme that employs a philosophy of the least regulation necessary combined with the most flexibility reasonably allowed.

Respectfully submitted,

**Region IV Education Service Center
George Mason University Instructional Foundation, Inc.
Humanities Instructional TV Educational Center, Inc.
Valley Lutheran High School
Indiana Higher Educational Telecommunications System
Views on Learning, Inc.
Butler Community College
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CERTIFICATE OF SERVICE

I, Robert F. Corazzini, on behalf of Region IV Education Service Center, George Mason University Instructional Foundation, Inc., Humanities Instructional TV Educational Center, Inc., Valley Lutheran High School, Indiana Higher Education Telecommunications System, Views on Learning, Inc., Butler Community College, Denver Public Schools and Minnesota Public Radio, certify that a copy of the foregoing Consolidated Partial Reply to Oppositions to Petition for Reconsideration and Clarification was delivered by hand or mailed via United States First Class Mail, postage prepaid to the following on February 18, 1999:

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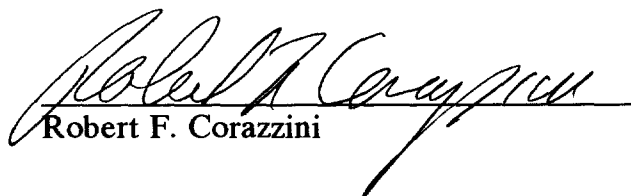
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